

BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation  
Against:

File No. 10-2008-194743

JOSE DANIEL HERNANDEZ-RIVERA, M.D.

Physician's and Surgeon's  
Certificate No. A 80166

Respondent.

DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby accepted and adopted as the Decision and Order by the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on March 17, 2011.

DATED February 15, 2011

MEDICAL BOARD OF CALIFORNIA



Shelton Duruisseau, Ph.D.  
Chair, Panel A

1 KAMALA D. HARRIS  
Attorney General of California  
2 THOMAS S. LAZAR  
Supervising Deputy Attorney General  
3 HEIDI R. WEISBAUM  
Deputy Attorney General  
4 State Bar No. 101489  
110 West "A" Street, Suite 1100  
5 San Diego, CA 92101  
P.O. Box 85266  
6 San Diego, CA 92186-5266  
Telephone: (619) 645-2098  
7 Facsimile: (619) 645-2061  
*Attorneys for Complainant*

8  
9 **BEFORE THE**  
**MEDICAL BOARD OF CALIFORNIA**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 10-2008-194743

13 **JOSE DANIEL HERNANDEZ-RIVERA, M.D.**  
6373 3rd Avenue, Suite H  
14 Chula Vista, CA 91911

OAH No. 2010080958

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

15 Physician's and Surgeon's  
16 Certificate No. A 80166

17 Respondent.  
18

19 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-  
20 entitled proceedings that the following matters are true:

21 **PARTIES**

22 1. Linda K. Whitney (Complainant) is the Executive Director of the Medical Board of  
23 California. She brought this action solely in her official capacity and is represented in this matter  
24 by Kamala D. Harris, Attorney General of the State of California, by Heidi R. Weisbaum, Deputy  
25 Attorney General.

26 2. Respondent Jose Daniel Hernandez-Rivera, M.D. (Respondent), is represented in this  
27 proceeding by attorney Samuel Spital, Esq., whose address is: Spital & Associates, 8880 Rio San  
28 Diego Drive, Suite 800, San Diego, CA 92108-1642.

3. On or about August 14, 2002, the Medical Board of California (Board) issued Physician's and Surgeon's Certificate No. A80166 to Jose Daniel Hernandez-Rivera, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 10-2008-194743, and will expire on July 31, 2012, unless renewed.

## JURISDICTION

4. On April 27, 2010, Accusation No. 10-2008-194743 was filed before the Medical Board of California, Department of Consumer Affairs, and is currently pending against Respondent. A true and correct copy of the Accusation and all other statutorily required documents were properly served on Respondent and he timely filed his Notice of Defense contesting the Accusation. A true and correct copy of Accusation No. 10-2008-194743 is attached as Exhibit A and incorporated herein by reference.

## ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 10-2008-194743. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

///

///

/ / /

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

- 2
- 3
- 4
- 5

6  
7  
8  
9  
10

- 1
- 2
- 3

## 4

5  
6  
7  
8

## 9

20  
21  
22  
23

24  
25  
26  
27  
28

1 General's Office. Communications pursuant to this paragraph shall not disqualify the Board, any  
2 member thereof, and/or any other person from future participation in this or any other matter  
3 affecting or involving Respondent. In the event that the Board, in its discretion, does not approve  
4 and adopt this Stipulated Settlement and Disciplinary Order, with the exception of this paragraph,  
5 it shall not become effective, shall be of no evidentiary value whatsoever, and shall not be relied  
6 upon or introduced in any disciplinary action by either party hereto. Respondent further agrees  
7 that should the Board reject this Stipulated Settlement and Disciplinary Order for any reason,  
8 Respondent will assert no claim that the Board, or any member thereof, was prejudiced by  
9 its/his/her review, discussion and/or consideration of this Stipulated Settlement and Disciplinary  
10 Order or of any matter or matters related hereto.

#### 11 **ADDITIONAL PROVISIONS**

12 14. This Stipulated Settlement and Disciplinary Order is intended by the parties herein to  
13 be an integrated writing representing the complete, final and exclusive embodiment of the  
14 agreements of the parties in the above-entitled matter.

15 15. The parties agree that facsimile copies of this Stipulated Settlement and Disciplinary  
16 Order, including facsimile signatures of the parties, may be used in lieu of original documents and  
17 signatures and, further, that facsimile copies shall have the same force and effect as originals.

18 16. In consideration of the foregoing admissions and stipulations, the parties agree the  
19 Board may, without further notice or opportunity to be heard by Respondent, issue and enter the  
20 following Disciplinary Order:

#### 21 **DISCIPLINARY ORDER**

22 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A80166 issued  
23 to Respondent Jose Daniel Hernandez-Rivera, M.D., is revoked. However, the revocation is  
24 stayed and Respondent is placed on probation for seven (7) years from the effective date of this  
25 Decision on the following terms and conditions.

26 1. **ACTUAL SUSPENSION** As part of probation, Respondent is suspended from the  
27 practice of medicine for 90 days beginning with the effective date of this Decision.

28 ///

1           2.    THIRD PARTY CHAPERONE During probation, Respondent shall have a third  
2 party chaperone present while consulting, examining or treating all female patients. Respondent  
3 shall, within 30 calendar days of the effective date of the Decision, submit to the Board or its  
4 designee for prior approval name(s) of persons who will act as the third party chaperone. Each  
5 third party chaperone shall initial and date each patient medical record at the time the chaperone's  
6 services are provided. Each third party chaperone shall read the Decision(s) and the  
7 Accusation(s), and fully understand the role of the third party chaperone. Respondent shall  
8 maintain a log of all patients seen for whom a third party chaperone is required. The log shall  
9 contain the: 1) patient name, address and telephone number; 2) medical record number; and 3)  
10 date of service. Respondent shall keep this log in a separate file or ledger, in chronological order,  
11 shall make the log available for immediate inspection and copying on the premises at all times  
12 during business hours by the Board or its designee, and shall retain the log for the entire term of  
13 probation. Failure to maintain a log of all patients requiring a third party chaperone, or to make  
14 the log available for immediate inspection and copying on the premises, is a violation of  
15 probation.

16           3.    EDUCATION COURSE Within 60 calendar days of the effective date of this  
17 Decision, and on an annual basis thereafter, Respondent shall submit to the Board or its designee  
18 for its prior approval educational program(s) or course(s) which shall not be less than 15 hours  
19 per year, for each year of probation. The educational program(s) or course(s) shall be aimed at  
20 correcting any areas of deficient practice or knowledge and shall be Category I certified, limited  
21 to classroom, conference, or seminar settings. The educational program(s) or course(s) shall be at  
22 Respondent's expense and shall be in addition to the Continuing Medical Education (CME)  
23 requirements for renewal of licensure. Following the completion of each course, the Board or its  
24 designee may administer an examination to test Respondent's knowledge of the course.  
25 Respondent shall provide proof of attendance for 40 hours of continuing medical education of  
26 which 15 hours were in satisfaction of this condition.

27           4.    ETHICS COURSE Within 60 calendar days of the effective date of this Decision,  
28 Respondent shall enroll in a course in ethics, at his expense, approved in advance by the Board or

1 its designee. Failure to successfully complete the course during the first year of probation is a  
2 violation of probation.

3 An ethics course taken after the acts that gave rise to the charges in the Accusation, but  
4 prior to the effective date of the Decision may, in the sole discretion of the Board or its designee,  
5 be accepted towards the fulfillment of this condition if the course would have been approved by  
6 the Board or its designee had the course been taken after the effective date of this Decision.

7 Respondent shall submit a certification of successful completion to the Board or its  
8 designee not later than 15 calendar days after successfully completing the course, or not later than  
9 15 calendar days after the effective date of the Decision, whichever is later.

10 5. PROFESSIONAL BOUNDARIES PROGRAM Within 60 calendar days from the  
11 effective date of this Decision, Respondent shall enroll in a professional boundaries program, at  
12 his expense, equivalent to the Professional Boundaries Program, Physician Assessment and  
13 Clinical Education Program at the University of California, San Diego School of Medicine  
14 ("Program"). Respondent, at the Program's discretion, shall undergo and complete the Program's  
15 assessment of his competency, mental health and/or neuropsychological performance, and at  
16 minimum, a 24 hour program of interactive education and training in the area of boundaries,  
17 which takes into account data obtained from the assessment and from the Decision(s),  
18 Accusation(s) and any other information that the Board or its designee deems relevant. The  
19 Program shall evaluate Respondent at the end of the training, and the Program shall provide any  
20 data from the assessment and training as well as the results of the evaluation to the Board or its  
21 designee.

22 Failure to complete the entire Program not later than six months after Respondent's initial  
23 enrollment shall constitute a violation of probation unless the Board or its designee agrees in  
24 writing to a later time for completion. Based on Respondent's performance in and evaluations  
25 from the assessment, education, and training, the Program shall advise the Board or its designee  
26 of its recommendation(s) for additional education, training, psychotherapy and other measures  
27 necessary to ensure that Respondent can practice medicine safely. Respondent shall comply with

28 ///

1 the Program recommendations. At the completion of the Program, Respondent shall submit to a  
2 final evaluation. The Program shall provide the results of the evaluation to the Board or its  
3 designee.

4 The Program's determination whether or not Respondent successfully completed the  
5 Program shall be binding.

6 Failure to participate in and complete successfully all phases of the Program, as outlined  
7 above, is a violation of probation.

8 A boundaries course taken after the acts that gave rise to the charges in the Accusation, but  
9 prior to the effective date of the Decision may, in the sole discretion of the Board or its designee,  
10 be accepted towards the fulfillment of this condition if the course would have been approved by  
11 the Board or its designee had the course been taken after the effective date of this Decision.

12 6. PSYCHIATRIC EVALUATION Within 30 calendar days of the effective date of  
13 this Decision, and on whatever periodic basis thereafter may be required by the Board or its  
14 designee, Respondent shall undergo and complete a psychiatric evaluation (and psychological  
15 testing, if deemed necessary) by a Board-appointed board certified psychiatrist, who shall  
16 consider any information provided by the Board or designee and any other information the  
17 psychiatrist deems relevant, and shall furnish a written evaluation report to the Board or its  
18 designee. Psychiatric evaluations conducted prior to the effective date of the Decision shall not  
19 be accepted towards the fulfillment of this requirement. Respondent shall pay the cost of all  
20 psychiatric evaluations and psychological testing.

21 Respondent shall comply with all restrictions or conditions recommended by the evaluating  
22 psychiatrist within 15 calendar days after being notified by the Board or its designee. Failure to  
23 undergo and complete a psychiatric evaluation and psychological testing, or comply with the  
24 required additional conditions or restrictions, is a violation of probation.

25 7. PSYCHOTHERAPY Within 60 calendar days of the effective date of this Decision,  
26 and if determined by the psychological evaluation to be necessary, Respondent shall submit to the  
27 Board or its designee for prior approval the name and qualifications of a board certified  
28 psychiatrist or a licensed psychologist who has a doctoral degree in psychology and at least five



1 years of postgraduate experience in the diagnosis and treatment of emotional and mental  
2 disorders. Upon approval, Respondent shall undergo and continue treatment, including any  
3 modifications to the frequency of psychotherapy, until the Board or its designee deems that no  
4 further psychotherapy is necessary.

5 The psychotherapist shall consider any information provided by the Board or its designee  
6 and any other information the psychotherapist deems relevant and shall furnish a written  
7 evaluation report to the Board or its designee. Respondent shall cooperate in providing the  
8 psychotherapist any information and documents that the psychotherapist may deem pertinent.  
9 Respondent shall have the treating psychotherapist submit quarterly status reports to the Board or  
10 its designee. The Board or its designee may require Respondent to undergo psychiatric  
11 evaluations by a Board-appointed board certified psychiatrist.

12 If, prior to the completion of probation, Respondent is found to be mentally unfit to resume  
13 the practice of medicine without restrictions, the Board shall retain continuing jurisdiction over  
14 Respondent's license, and the period of probation shall be extended until the Board determines  
15 that Respondent is mentally fit to resume the practice of medicine without restrictions.  
16 Respondent shall pay the cost of all psychotherapy and psychiatric evaluations.

17 Failure to undergo and continue psychotherapy treatment, or comply with any required  
18 modification in the frequency of psychotherapy, is a violation of probation.

19 8. MONITORING - PRACTICE Within 30 calendar days of the effective date of this  
20 Decision, Respondent shall submit to the Board or its designee for prior approval as a practice  
21 monitor, the name and qualifications of one or more licensed physicians and surgeons whose  
22 licenses are valid and in good standing, and who are preferably American Board of Medical  
23 Specialties (ABMS) certified. A monitor shall have no prior or current business or personal  
24 relationship with Respondent, or other relationship that could reasonably be expected to  
25 compromise the ability of the monitor to render fair and unbiased reports to the Board, including,  
26 but not limited to, any form of bartering, shall be in Respondent's field of practice, and must  
27 agree to serve as Respondent's monitor. Respondent shall pay all monitoring costs.

28 ///

1 The Board or its designee shall provide the approved monitor with copies of the Decision(s)  
2 and Accusation(s), and a proposed monitoring plan. Within 15 calendar days of receipt of the  
3 Decision(s), Accusation(s), and proposed monitoring plan, the monitor shall submit a signed  
4 statement that the monitor has read the Decision(s) and Accusation(s), fully understands the role  
5 of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees  
6 with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the  
7 signed statement.

8 Within 60 calendar days of the effective date of this Decision, and continuing throughout  
9 probation, Respondent's practice shall be monitored by the approved monitor. Respondent shall  
10 make all records available for immediate inspection and copying on the premises by the monitor  
11 at all times during business hours, and shall retain the records for the entire term of probation.

12 The monitor(s) shall submit a quarterly written report to the Board or its designee which  
13 includes an evaluation of Respondent's performance, indicating whether Respondent's practices  
14 are within the standards of practice of medicine, and whether Respondent is practicing medicine  
15 safely.

16 It shall be the sole responsibility of Respondent to ensure that the monitor submits the  
17 quarterly written reports to the Board or its designee within 10 calendar days after the end of the  
18 preceding quarter.

19 If the monitor resigns or is no longer available, Respondent shall, within 5 calendar days of  
20 such resignation or unavailability, submit to the Board or its designee, for prior approval, the  
21 name and qualifications of a replacement monitor who will be assuming that responsibility within  
22 15 calendar days. If Respondent fails to obtain approval of a replacement monitor within 60 days  
23 of the resignation or unavailability of the monitor, Respondent shall be suspended from the  
24 practice of medicine until a replacement monitor is approved and prepared to assume immediate  
25 monitoring responsibility. Respondent shall cease the practice of medicine within 3 calendar  
26 days after being so notified by the Board or designee.

27 ///

28 ///

1 Failure to maintain all records, or to make all appropriate records available for immediate  
2 inspection and copying on the premises, or to comply with this condition as outlined above is a  
3 violation of probation.

4 9. NOTIFICATION Prior to engaging in the practice of medicine, Respondent shall  
5 provide a true copy of the Decision(s) and Accusation(s) to the Chief of Staff or the Chief  
6 Executive Officer at every hospital where privileges or membership are extended to Respondent,  
7 at any other facility where Respondent engages in the practice of medicine, including all  
8 physician and locum tenens registries or other similar agencies, and to the Chief Executive  
9 Officer at every insurance carrier which extends malpractice insurance coverage to Respondent.  
10 Respondent shall submit proof of compliance to the Board or its designee within 15 calendar  
11 days.

12 This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

13 10. SUPERVISION OF PHYSICIAN ASSISTANTS During probation, Respondent is  
14 prohibited from supervising physician assistants.

15 11. OBEY ALL LAWS Respondent shall obey all federal, state and local laws, all rules  
16 governing the practice of medicine in California, and remain in full compliance with any court  
17 ordered criminal probation, payments and other orders.

18 12. QUARTERLY DECLARATIONS Respondent shall submit quarterly declarations  
19 under penalty of perjury on forms provided by the Board, stating whether there has been  
20 compliance with all the conditions of probation. Respondent shall submit quarterly declarations  
21 not later than 10 calendar days after the end of the preceding quarter.

22 13. PROBATION UNIT COMPLIANCE Respondent shall comply with the Board's  
23 probation unit. Respondent shall, at all times, keep the Board informed of Respondent's business  
24 and residence addresses. Changes of such addresses shall be immediately communicated in  
25 writing to the Board or its designee. Under no circumstances shall a post office box serve as an  
26 address of record, except as allowed by Business and Professions Code section 2021(b).

27 Respondent shall not engage in the practice of medicine in Respondent's place of residence.  
28 Respondent shall maintain a current and renewed California physician's and surgeon's license.

Respondent shall immediately inform the Board, or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than 30 calendar days.

14. INTERVIEW WITH THE BOARD, OR ITS DESIGNEE Respondent shall be available in person for interviews either at Respondent's place of business or at the probation unit office, with the Board or its designee, upon request at various intervals, and either with or without prior notice throughout the term of probation.

15. RESIDING OR PRACTICING OUT-OF-STATE In the event Respondent should leave the State of California to reside or to practice, Respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of departure and return. Non-practice is defined as any period of time exceeding 30 calendar days in which Respondent is not engaging in any activities defined in Sections 2051 and 2052 of the Business and Professions Code.

All time spent in an intensive training program outside the State of California which has been approved by the Board or its designee shall be considered as time spent in the practice of medicine within the State. A Board-ordered suspension of practice shall not be considered as a period of non-practice. Periods of temporary or permanent residence or practice outside California will not apply to the reduction of the probationary term. Periods of temporary or permanent residence or practice outside California will relieve Respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; and Probation Unit Compliance.

Respondent's license shall be automatically cancelled if Respondent's periods of temporary or permanent residence or practice outside California total two years. However, Respondent's license shall not be cancelled as long as Respondent is residing and practicing medicine in another state of the United States and is on active probation with the medical licensing authority of that state, in which case the two year period shall begin on the date probation is completed or terminated in that state.

///

///

1           16.   FAILURE TO PRACTICE MEDICINE - CALIFORNIA RESIDENT

2           In the event Respondent resides in the State of California and for any reason Respondent  
3 stops practicing medicine in California, Respondent shall notify the Board or its designee in  
4 writing within 30 calendar days prior to the dates of non-practice and return to practice. Any  
5 period of non-practice within California, as defined in this condition, will not apply to the  
6 reduction of the probationary term and does not relieve Respondent of the responsibility to  
7 comply with the terms and conditions of probation. Non-practice is defined as any period of time  
8 exceeding 30 calendar days in which Respondent is not engaging in any activities defined in  
9 sections 2051 and 2052 of the Business and Professions Code.

10           All time spent in an intensive training program which has been approved by the Board or its  
11 designee shall be considered time spent in the practice of medicine. For purposes of this  
12 condition, non-practice due to a Board-ordered suspension or in compliance with any other  
13 condition of probation, shall not be considered a period of non-practice.

14           Respondent's license shall be automatically cancelled if Respondent resides in California  
15 and for a total of two years, fails to engage in California in any of the activities described in  
16 Business and Professions Code sections 2051 and 2052.

17           17.   COMPLETION OF PROBATION Respondent shall comply with all financial  
18 obligations (e.g., probation monitoring costs) not later than 120 calendar days prior to the  
19 completion of probation. Upon successful completion of probation, Respondent's certificate shall  
20 be fully restored.

21           18.   VIOLATION OF PROBATION Failure to fully comply with any term or condition  
22 of probation is a violation of probation. If Respondent violates probation in any respect, the  
23 Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and  
24 carry out the disciplinary order that was stayed. If an Accusation, Petition to Revoke Probation,  
25 or an Interim Suspension Order is filed against Respondent during probation, the  
26 Board shall have continuing jurisdiction until the matter is final, and the period of probation shall  
27 be extended until the matter is final.

28    ///

1           19. LICENSE SURRENDER Following the effective date of this Decision, if  
2 Respondent ceases practicing due to retirement, health reasons or is otherwise unable to satisfy  
3 the terms and conditions of probation, Respondent may request the voluntary surrender of  
4 Respondent's license. The Board reserves the right to evaluate Respondent's request and to  
5 exercise its discretion whether or not to grant the request, or to take any other action deemed  
6 appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender,  
7 Respondent shall within 15 calendar days deliver Respondent's wallet and wall certificate to the  
8 Board or its designee and Respondent shall no longer practice medicine. Respondent will no  
9 longer be subject to the terms and conditions of probation and the surrender of Respondent's  
10 license shall be deemed disciplinary action. If Respondent re-applies for a medical license, the  
11 application shall be treated as a petition for reinstatement of a revoked certificate.

12           20. PROBATION MONITORING COSTS Respondent shall pay the costs associated  
13 with probation monitoring each and every year of probation, as designated by the Board. Such  
14 costs shall be payable to the Medical Board of California and delivered to the Board or its  
15 designee no later than January 31 of each calendar year. Failure to pay costs within 30 calendar  
16 days of the due date is a violation of probation.

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

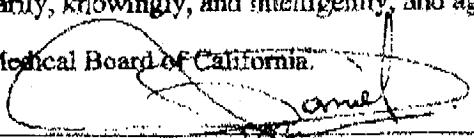
27 ///

28 ///

1 ACCEPTANCE


2 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully  
3 discussed it with my attorney, Samuel Spital, Esq. I understand the stipulation and the effect it  
4 will have on my Physician's and Surgeon's Certificate No. A80166. I enter into this Stipulated  
5 Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be  
6 bound by the Decision and Order of the Medical Board of California.

7 DATED: 02/07/11

  
8 JOSE DANIEL HERNANDEZ-RIVERA, M.D.  
Respondent

9  
10 I have read and fully discussed with my client Daniel Hernandez-Rivera, M.D., the terms  
11 and conditions and other matters contained in the above Stipulated Settlement and Disciplinary  
12 Order. I approve its form and content.

13 DATED: 2/7/11

  
14 SAMUEL SPITAL, ESQ.  
Spital & Associates  
15 Attorney for Respondent

16  
17 ENDORSEMENT

18 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully  
19 submitted for consideration by the Medical Board of California of the Department of Consumer  
20 Affairs.

21 Dated: \_\_\_\_\_

Respectfully Submitted,

22 KAMALA D. HARRIS  
Attorney General of California  
23 THOMAS S. LAZAR  
Supervising Deputy Attorney General

24  
25  
26 HEIDI R. WEISBAUM  
Deputy Attorney General  
27 Attorneys for Complainant

28 SD2010800444

1 ACCEPTANCE

2 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully  
3 discussed it with my attorney, Samuel Spital, Esq. I understand the stipulation and the effect it  
4 will have on my Physician's and Surgeon's Certificate No. A80166. I enter into this Stipulated  
5 Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be  
6 bound by the Decision and Order of the Medical Board of California.

7 DATED: \_\_\_\_\_

8 JOSE DANIEL HERNANDEZ-RIVERA, M.D.  
9 Respondent

10 I have read and fully discussed with my client Daniel Hernandez-Rivera, M.D., the terms  
11 and conditions and other matters contained in the above Stipulated Settlement and Disciplinary  
12 Order. I approve its form and content.

13 DATED: \_\_\_\_\_

14 SAMUEL SPITAL, ESQ.  
15 Spital & Associates  
16 Attorney for Respondent


17 ENDORSEMENT

18 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully  
19 submitted for consideration by the Medical Board of California of the Department of Consumer  
20 Affairs.

21 Dated: February 10, 2011

Respectfully Submitted,

22 KAMALA D. HARRIS  
23 Attorney General of California  
24 THOMAS S. LAZAR  
25 Supervising Deputy Attorney General

26   
27 HEIDI R. WEISBAUM  
28 Deputy Attorney General  
Attorneys for Complainant

SD2010800444



**Exhibit A**

**Accusation No. 10-2008-194743**

1 EDMUND G. BROWN JR.  
Attorney General of California  
2 THOMAS S. LAZAR  
Supervising Deputy Attorney General  
3 HEIDI R. WEISBAUM  
Deputy Attorney General  
4 State Bar No. 101489  
110 West "A" Street, Suite 1100  
5 San Diego, CA 92101  
P.O. Box 85266  
6 San Diego, CA 92186-5266  
Telephone: (619) 645-2098  
7 Facsimile: (619) 645-2061  
*Attorneys for Complainant*

9 **BEFORE THE**  
10 **MEDICAL BOARD OF CALIFORNIA**  
11 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 10-2008-194743

13 **JOSE DANIEL HERNANDEZ-RIVERA, M.D.,**  
14 3955 Bonita Road  
Bonita, CA 91902  
15 Physician's and Surgeon's  
Certificate No. A 80166

**A C C U S A T I O N**

16 Respondent.

17  
18 Complainant alleges:

19 **PARTIES**

20 1. Linda K. Whitney (Complainant) brings this Accusation solely in her official capacity  
21 as the Interim Executive Director of the Medical Board of California, Department of Consumer  
22 Affairs.

23 2. On or about August 14, 2002, the Medical Board of California issued Physician's and  
24 Surgeon's Certificate Number A 80166 to Jose Daniel Hernandez-Rivera, M.D. (Respondent).  
25 The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the  
26 charges brought herein and will expire on July 31, 2010, unless renewed.

27 ///

28 ///

## JURISDICTION

3. This Accusation is brought before the Medical Board of California (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2227 of the Code provides that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, be placed on probation and required to pay the costs of probation monitoring, be publicly reprimanded or have such other action taken in relation to discipline as the Board deems proper.

5. Section 2234 of the Code provides in part that the Board "shall take action against any licensee charged with unprofessional conduct. . . ." Unprofessional conduct under Section 2234 includes conduct that breaches the rules or ethical code of the medical profession, or conduct that is unbecoming to a member in good standing of the medical profession, and which demonstrates an unfitness to practice medicine.<sup>1</sup>

6. Section 726 of the Code states:

"The commission of any act of sexual abuse, misconduct, or relations with a patient, client, or customer constitutes unprofessional conduct and grounds for disciplinary action for any person licensed under this division, under any initiative act referred to in this division and under Chapter 17 (commencing with Section 9000) of Division 3.

"This section shall not apply to sexual contact between a physician and surgeon and his or her spouse or person in an equivalent domestic relationship when that physician and surgeon provides medical treatment, other than psychotherapeutic treatment, to his or her spouse or person in an equivalent domestic relationship."

///

///

///

---

<sup>1</sup> *Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 575.

1 **FIRST CAUSE FOR DISCIPLINE**

2 (Sexual Abuse of a Patient)

3 7. Respondent is subject to disciplinary action under Code section 726, in that he  
4 committed sexual abuse and/or sexual misconduct of a patient. The circumstances are as follows:

5 8. On about September 16, 2008, S. S., a 51 year old married woman went to Kaiser  
6 Permanente San Diego for a scheduled appointment with Respondent. S.S. had seen Respondent  
7 for primary care for a number of years.

8 9. Mrs. S. was placed in an examining room and a short time later Respondent entered  
9 the room. Respondent greeted Mrs. S. and asked how she was doing. Mrs. S. told him she was  
10 feeling down due to having diabetes and was also having pain in her right knee. Respondent told  
11 her she would be alright if she took care of herself and asked her to sit on the examining table.

12 10. When Mrs. S. was on the examining table, Respondent checked her right leg and her  
13 vital signs, and asked if she needed to see a therapist; Mrs. S. replied she did not. Respondent  
14 asked how things were between Mrs. S. and her husband and she indicated things were not great.  
15 Respondent then asked how sex was with her husband. Mrs. S. indicated they did not have sex  
16 often. She said she thought her husband's cholesterol medicine might have an effect on his sex  
17 drive and said her husband asked her to find out about Viagra. Respondent told her to tell him to  
18 consult with his own physician.

19 11. Respondent next asked Mrs. S. how she felt about not having sex and she responded  
20 that it was frustrating for her. Respondent asked if S.S. had ever considered having an affair and  
21 she said she had not. Respondent also suggested she go to "F Street" to buy a toy. Mrs. S. did  
22 not reply to this suggestion.

23 12. While she was still sitting on the examination table, Respondent approached on her  
24 left side and gave her a hug by placing his right arm on top of her shoulder. He removed his right  
25 arm from her shoulder and brushed his left palm against her breasts from right to left. Mrs. S. did  
26 not think this was right, thought she should not move, and felt scared. Respondent's action  
27 reminded her of a time when she was very young and was molested by her uncle. She recalled

28 ///

1 not moving or saying anything at the time because her uncle threatened to punish her if she did.  
2 Mrs. S. could not believe it was happening again.

3 13. Respondent next listened to Mrs. S.'s chest, beginning in the front, then the back,  
4 then the front. He then lifted her blouse, raised her bra exposing her left breast, and placed his  
5 mouth on her nipple and sucked. Afterward, he replaced her bra and her blouse back over her  
6 body. Respondent then placed the palm of his left hand on her vagina and moved it in an up and  
7 down motion several times. While still facing her, he placed his hands around her buttocks and  
8 pulled her against his body. Mrs. S. could feel that Respondent had an erection. She did not look  
9 at him and kept her hands down at her sides.

10 14. Respondent then helped Mrs. S. off the examining table by grabbing her right forearm  
11 with his left hand. As she was facing him, he hugged and squeezed her tight against him, placing  
12 his arms and hands on her back. Mrs. S. hugged him back out of fear. Respondent turned his  
13 face to hers and she felt a lick on her cheek. He tried to stick his tongue in her mouth but she did  
14 not open her mouth. Respondent still had his arms around her, while doing this. Respondent then  
15 grabbed her right hand with his left hand and placed her hand on his penis over his pants. Mrs. S.  
16 could feel his erection through his pants. He moved his hand away from her hand and she was  
17 able to remove her hand from his penis. Respondent then grabbed her hand and put it to his heart,  
18 exclaiming, "Look at my heart; it's beating really fast." Again, Mrs. S. did not move or say  
19 anything.

20 15. Respondent then released Mrs. S., but grabbed her by the waist, turned her around,  
21 bent her over on her stomach on the examining table, pressed the front of his body against her  
22 buttocks, and rubbed his penis against her. Again, Mrs. S. could feel Respondent's erection.  
23 Mrs. S. was too afraid Respondent would hurt her if she resisted or said anything.

24 16. When Respondent released Mrs. S., she stood up from the examining table. She  
25 started walking toward the door to leave when Respondent grabbed her from behind, put his arms  
26 around her, and pressed his erect penis against her. When he released her again, she walked to  
27 the door, turned to look at him, and saw him place his right index finger on his mouth, motioning  
28 for her to be quiet and say nothing. He then looked down at his pants and stated, "Look, I stained

1 my pants." Mrs. S. saw the stain on his pants, turned to open the door, but Respondent touched  
2 her again, this time caressing her neck. Mrs. S. started to leave the examining room but before  
3 she could she felt Respondent's hand caressing her neck area.

4 17. As soon as Mrs. S. arrived home, she notified her family, who later that day took her  
5 to the Chula Vista police station to file a report. Mrs. S. never returned to see Respondent.

## 6 SECOND CAUSE FOR DISCIPLINE

7 (General Unprofessional Conduct)

8 18. Respondent is further subject to disciplinary action under Code sections 2227 and  
9 2234, as defined by section 2234, in that he engaged in conduct that breaches the rules or ethical  
10 code of the medical profession, or conduct that is unbecoming to a member in good standing of  
11 the medical profession, and that demonstrates an unfitness to practice medicine. The  
12 circumstances are as follows:

13 A. Paragraphs 7 through 17, above, are incorporated herein by reference.

## 14 PRAYER

15 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
16 and that following the hearing, the Medical Board of California issue a decision:

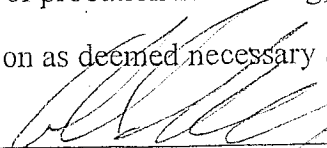
17 1. Revoking or suspending Physician's and Surgeon's Certificate Number A 80166,  
18 issued to Respondent Jose Daniel Hernandez-Rivera, M.D.

19 2. Revoking, suspending or denying approval of Respondent Jose Daniel Hernandez-  
20 Rivera, M.D.'s authority to supervise physician assistants, pursuant to section 3527 of the Code;

21 3. Ordering Respondent Jose Daniel Hernandez-Rivera, M.D., if placed on probation, to  
22 pay the Medical Board of California the costs of probation monitoring;

23 4. Taking such other and further action as deemed necessary and proper.

24 DATED: April 27, 2010

  
25 LINDA K. WHITNEY  
26 Interim Executive Director  
27 Medical Board of California  
28 Department of Consumer Affairs  
State of California  
Complainant